IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

CRP.No. 72 of 2004

(AGAINST THE ORDER IN IA.632/2002 IN O.S.No. 2074 OF 1999 OF THE ADDL. MUNSIFF'S COURT, IRINJALAKUDA)

REVN. PETITIONER/PETITIONER/PLAINTIFF:

KAVALAN,
AGED 47,
S/O. MADATHIPARAMBIL THEVAN, KADUKUTTY DESOM,
KALLOOR VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENT/ RESPONDENT/DEFENDANT:

MUKUNDAN,
AGED , S/O. MAKKATHIL VELAYUDHAN,
KADUKUTTY DESOM, KALLOOR VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N. MANOJ
ADV. SRI.DINESH R. SHENOY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP.No. 723 of 2005

ORDER ON I.A.NOS. 181 OF 2004 & 1700 OF 2004 IN C.R.P. 72 OF 2004

DISMISSED.

15.11.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 72 OF 2004

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Dated this the 15th November, 2007

O R D E R

The Revision Petitioner/first plaintiff challenges the order passed by the court below rejecting the request made by the petitioner to direct the commissioner to measure the property with the help of the surveyor and to complete the work entrusted with the Commissioner. Learned counsel for the respondent raised a preliminary objection that all the defendants are not made parties to the application and therefore the application and the C.R.P. are liable to be dismissed on that short ground.

2. In the Civil Revision Petition, the first defendant is the sole respondent. The Revision is filed against the order in I.A.No. 632 of 2002 . In the cause title in the application, the name of the first plaintiff is shown and thereafter it is shown as “and others” and they are shown as petitioners. The name of the first defendant is shown as respondent and thereafter it is stated “and others”. Learned counsel for the revision petitioner submits that all the defendants were made respondents in the application. In the certified copy of the order issued, the name of the first plaintiff and first defendant alone are shown as petitioner and respondent respectively. The application filed before the court below was

evidently defective and it did not conform to Rule 39 of the Civil Rules of Practice. The Registry of the court below should have returned the application as defective. Rule 39 of the Civil Rules of Practice provides that interlocutory applications in plaint, original petition, appeal or other proceedings shall have a cause title which may be drawn up in the manner as shown in Form No.13. Relevant portion of Form No.13 appended to the Civil Rules of Practice is as follows:

> *"In the Court of.....of.....*
> *Original Suit No.....of 19*
> *Interlocutory Application No..... of 19*
> *Between*
>
> 1. *R. Krishnan.....Applicant 1 -1st Plaintiff*
> 2. *R. Kesavan.....Applicant 2 - 2nd Plaintiff*
>
> *And*
>
> 1. *N. Ibrahim.....Respondent 1 - 1st Defendant*
> 2. *M. Abu Baker..... Respondent 2 - 2nd Defendant "*

In the application in the present case, the names of all the petitioners and the respondents are not shown. Who are all the parties in the application before the court below is not clear either from the application or from the certified copy of the order. In a suit, there may be several plaintiffs and several defendants. One of the plaintiffs or some of the plaintiffs could validly make an application and it is not necessary that all the parties should file the application. So also, a plaintiff may seek relief in an interlocutory application against one or some of the defendants, in which case, it is not necessary to make all the defendants as

parties to the application. Depending on the nature of the relief claimed in the application, the plaintiff may show the defendants concerned as respondents in the application. If an application as is filed by the revision petitioner is disposed of and a certified copy, as is now prepared, is issued to the parties, the revisional court would not be in a position to ascertain whether all the parties in the interlocutory application were made parties in the revision or whether some of the persons who were not parties in the Interlocutory Application before the lower court were shown as petitioners or respondents in the revision. The Revisional court also would not be in a position to effectively deal with an objection as is now raised, that all the defendants were not made parties in the Interlocutory Application. The proceedings would be imperfect in the trial court as well as in the revisional court in such circumstances. The proceedings and orders in the Interlocutory Applications may assume importance in the subsequent proceedings in the same suit or in appeal or second appeal therefrom. Since the application filed before the court below is defective, I am of the view that the petitioner should be given an opportunity to show the names of the petitioners and respondents in the application and to prosecute the application in accordance with law.

3. The court below dismissed the application on the ground that the revision petitioner/plaintiff did not co-operate with the Commissioner to complete the inspection. The submission made by the counsel on either side and the

copies of the records placed before me would indicate that the Commissioner had submitted a report on 08.12.1999. Thereafter, another report dated 14.02.2002 was submitted by the commissioner after the second inspection. The commissioner inspected the property again as per the order in I.A.No. 2339 of 2000. The inspection was proposed to be held on 20.03.2003 . On that date, the inspection did not take place. The inspection was made and measurement of the property was taken on another date. But the Commissioner could not locate the survey stones. Therefore, he proposed to conduct a further inspection on 17.05.2003 . Inspection was made on 17.05.2003 . Since the inspection could not be completed on that date, another date was fixed for further inspection. It is stated in the report that the advocate for the defendants at whose instance Commissioner was appointed, had put forward lame excuses and protracted the matter. In the first paragraph of the Commissioner's report also, it is stated that I.A.No.2339 of 2000 was filed by the defendants and a commission was issued as requested by the defendants. In the report dated 08.11.2003, the Commissioner stated that he is ready to complete the inspection and file the report and plan, provided both sides are prepared to co-operate.

I.A.No. 632 of 2002 was filed by the plaintiff/plaintiffs in the light of the report dated 08.11.2003 filed by the Commissioner. The court below held that the plaintiffs did not co-operate with the Commissioner and therefore, the

request made by the plaintiff/plaintiffs cannot be entertained. After going through the commissioner's report and the order passed by the court below, it is not clear as to who did not co-operate ; whether the plaintiffs or the defendants. Going by the commissioner's report, non-co-operation was by the defendants. As per the order passed by the court below, non-co-operation was by the plaintiffs. The court below dismissed the application only on the ground that the plaintiffs did not co-operate with the Commissioner. In these circumstances, I have no other option but to set aside the order passed by the court below, though the suit is of the year 1999 and the commissioner had inspected the property twice. The court below shall dispose of the Interlocutory Application afresh after hearing the counsel for the parties as well as the Commissioner, as expeditiously as possible and at any rate within one month from the date on which a proper amended application as indicated above is made available before the court. The revision petitioner shall take steps to correct/amend the application within three weeks from today. If no such steps are taken by the petitioner, the Civil Revision Petition shall be treated as dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 72 OF 2004

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Dated this the 15th November, 2007

O R D E R